IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3531 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

BABUBHAI KALABHAI NINAMA

Appearance:

MR PV NANAVATI for Petitioner

MR JV JAPEE for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/04/2001

ORAL JUDGEMENT

Heard Mr. V.P.Nanavaty learned advocate for the appellant and Mr. J.V.Japee learned advocate representing respondent no.1 - claimant. While

respondent nos. 2 and 3 are served. By consent of the parties, present appeal is taken up for final hearing.

2. This is an appeal under Section 173 of the Motor Vehicle Act, 1988 (for short "the Act") at the instance of original opponent no.2 - insurer of the offending vehicle involved in the accident in question.

3. The appellant herein challenges the order passed by M.A.C.Tribunal (Auxiliary), Sabarkantha at Himmatnagar under Section 140 of the Act at Exh.4 of the M.A.C.Petition No. 1247 of 1997. That the claim Tribunal has awarded Rs.25,000/- to present respondent no.1 - original claimant by way of interim award which is subject to adjustment against the award which may be passed in the said M.A.C.Petition No. 1247 of 1997 pending before the M.A.C.Tribunal (Auxiliary), Sabarkantha at Himmatnagar.

4. In the aforesaid premise, it is difficult to find any reason to interfere at this stage of the matter and no useful purpose would be served by keeping present appeal pending at this stage. Further, opponent no.1 the original claimant shall file an undertaking before the Tribunal within four weeks to service of this order to the effect that the main claim petition being Claim Petition No. 1247 of 1997 pending before the M.A.C.Tribunal, Sabarkantha at Himmatnagar shall not be fsabundoned nor shall be withdrawn or permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merits in the said claim petition.

5. As per appellant the disability certificate filed by opponent no.1 as claimant during the hearing of application Exh.4 under Section 140 of the Act is doubtful and cannot be accepted at the face value. Under the circumstances, the amount of interim award made by the Tribunal under the impugned order below Exh.4 could be invested with any nationalized bank till final decision of M.A.C.Petition No.1247 of 1997 pending before the M.A.C.Tribunal (Auxiliary), Sabarkantha at Himmatnagar.

6. It may be noted that vide earlier order dated 20.12.2000 passed in the proceedings of Civil Application No. 1174 of 2000, this Court passed order by way of ad-interim relief to stay the execution and implementation of the judgement and award passed by learned M.A.C.Tribunal (Auxiliary), Sabarkantha at Himmatnagar below Exh.4 in M.A.C.Petition No. 1257 of

1997 dated 16.5.2000 on condition that amount deposited in this Court while filing the appeal which is Rs. 12,500/- shall be invested in any nationalized bank by way of FDR for the period of two years and the interest accrued thereon shall not be given to anybody an reinvested.

In the facts and circumstances of the case, the said interim order is modified to the extent that appellant shall deposit the remaining amount of Rs. 12,500/- along with the amount of interest accrued and cost as per award within four weeks in the M.A.C.Tribunal (Auxiliary), Sabarkantha at Himatnagar in the proceedings of M.A.C.Petition No. 1247 of 1997. That amount deposited by the appellant in this Court of Rs. 12,500/- be forthwith transmitted (if not transmitted uptil now) to the M.A.C.Tribunal ((Auxiliary) Sabarkantha at Himmatnagar in the proceedings of M.A.C.Petition No. 1247 of 1997 and the Tribunal shall pass appropriate order to deposit the entire amount of the impugned award with nationalized bank preferably of the choice of opponent no.1 - the original claimant in the joint name of claimant and Nazar for the period of two years on a condition that no premature encashment of FDR shall be permitted nor any encumbrance shall be created without prior permission of the Tribunal, but periodical interest accrued on the same at the end of every six months shall be payable to the claimant - opponent no.1 herein subject to adjustment of the final award passed in the proceedings of M.A.C.Petition No. 1247 of 1997. It is further directed that if the proceedings of M.A.C.Petition No. 1247 of 1997 is not concluded within a period of two years, the said FDR shall be renewed for further period two years on a same terms and conditions.

The respondent no.1 as original claimant shall be at liberty to move the Tribunal for permission to withdraw the amount for medical treatment on production of necessary evidence and Tribunal shall consider such application in accordance with law without being influenced by the observations made in the above stated order and permit the withdrawal of reasonable amount to the extent of 25% of the deposit, if deem fit, just and proper on the facts placed before the Tribunal.

7. Subject to aforesaid observation and direction, present appeal stands dispossed of as dismissed with no order as to costs.

(A.K.Trivedi,J.)

(vipul)